

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON L. SANFORD and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, CA

*Docket No. 02-1631; Submitted on the Record;
Issued January 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's compensation for the period of time from September 17 to 28, 2001.

The Office accepted appellant's August 6, 1996 claim for left wrist and right shoulder tendinitis, shoulder impingement and bilateral shoulder surgeries in 1998 and 1999. The Office authorized a second left shoulder surgery, which was performed on October 31, 2001. The Office also issued appellant a schedule award for a 17 percent permanent impairment to her left and right arms through March 18, 2002.

On September 30, 2001 appellant sought disability compensation for the period of time from September 17 to 28, 2001. Appellant submitted reports from her treating physician, Dr. Michael D. Butcher, a Board-certified orthopedic surgeon, dated November 5, 8 and December 20, 2001. In the November 5, 2001 report, Dr. Butcher stated that he was responding to the Office's October 23, 2001 letter in which the Office stated he did not mention disability in his September 20, 2001 report. He stated that, on the "PR2" [*i.e.*, progress report] form dated September 20, 2001, he circled disability status in two places, "Remain Off Work" and under "Total Disability." Dr. Butcher stated that he placed appellant on temporary total disability because of pending surgery, the surgery was performed on appellant's left shoulder on October 31, 2001 and it was anticipated that appellant would require 6 to 12 weeks to recover from the surgery including the healing time, rehabilitation and physical therapy.

In his November 8, 2001 report, Dr. Butcher stated that appellant was recovering satisfactorily from the October 31, 2001 surgery. He stated that appellant continued to receive physical therapy and take appropriate medicine for her shoulder. Dr. Butcher stated that appellant was not ready to return to work, and that she required modified work with no repetitive use of the left upper extremity, no using the left arm above the shoulder level and no heavy lifting. In his February 7, 2002 report, Dr. Butcher stated that appellant still had some pain and the examination revealed limited abduction and external rotation. He stated that appellant would

continue to be treated with medication and physical therapy and would be able to return to modified work.

Appellant submitted a magnetic resonance imaging (MRI) scan dated September 8, 2001 which showed extensive postsurgical change and susceptibility artifact “apparently from previous acromioplasty” and “near complete loss of the subacromial space at the level of the acromioclavicular joint suggestive of a high-grade tear of the rotator cuff tendon in the region of the myotendinous junction.”

Appellant also submitted several disability notes on the “PR-2” form from Dr. Butcher dated September 20, October 11, November 8 and 27 and December 20, 2001 and January 31, 2002. All these reports indicate that appellant was unable to work or was totally disabled or both. The November 8, 2001 report stated that appellant was totally disabled since September 17, 2001 through the present.

By decision dated March 13, 2002, the Office denied appellant’s claim, stating that the medical evidence failed to establish a causal relationship between the claimed disability and factors of her federal employment.

In a facsimile received by the Office on March 22, 2002, appellant requested reconsideration of the Office’s decision, with the handwritten words “Reconsider: Based on Medical Condition and Doctors’ Recommendations,” on a copy of the Office’s March 13, 2002 decision.

By decision dated April 9, 2002, the Office denied appellant’s request for reconsideration.

The Board finds that appellant has established that she as disabled for the period of time from September 17 to 28, 2001 due to her accepted left shoulder condition.

Appellant has the burden to establish continuing disability due to a work-related injury.¹ To establish disability, appellant must submit evidence from a qualified physician who on the basis of a complete and accurate factual and medical history, concluded that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

Appellant’s September 8, 2001 MRI scan of the left shoulder which revealed “near complete loss of the subacromial space at the level of the acromioclavical joint suggestive of a high-grade tear of the rotator cuff tendon, in the region of the myotendions junction.” Appellant’s treating physician, Dr. Butcher, thereafter, submitted a number of reports to the Office indicating that appellant was totally disabled from September 17, 2001, pending the shoulder surgery. As Dr. Butcher did report that appellant was disabled during the time period in question, September 17 to 28, 2001 due to the accepted left shoulder condition, pending the

¹ *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

² *See Carolyn F. Allen*, 47 ECAB 240, 245 (1995); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

authorized surgery, appellant did meet her burden of proof to establish entitlement to disability benefits during this period.

The April 9 and March 13, 2002 decisions of the Office of Workers' Compensation Programs are hereby reversed.³

Dated, Washington, DC
January 9, 2003

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

³ Since in her appeal to the Board appellant indicated that she was only challenging the denial of compensation for the period of time she was disabled in September 2001, the Board has not reviewed the Office's September 19, 2001 decision denying appellant compensation for the time period from January 1 to June 26, 1998.